

APR 22 2022

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No. 22-5253

IN THE
SUPREME COURT OF THE UNITED STATES

DENNIS CHARLES HELMER — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Dennis Charles Helmer #61076-018

(Your Name)

FEDERAL CORRECTIONAL INSTITUTION
PO Box 1031

(Address)

Coleman, FL 33521 - 1031

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

QUESTIONS PRESENTED

- 1.) Whether the District Court erred when it denied relief to Petitioner 18 U.S.C. 3582(c)(1)(A)(i) motion based upon the applicability of 18 U.S.C. 3553(a)(2)(D) factors, due to FBOP Medical Services having ignored repeated requests for medical care for POST-COVID-19 severe illness;
- 2.a) Whether the First Step Act announced a new substantive rule of Constitutional Law that applies when a prisoner brings 18 U.S.C. 3582(c)(1)(A) motion, rendering U.S.S.G. 1B1.13 an inapplicable policy statement, except, upon motion of Director of the BOP;
- 2.b) Further, Petitioner asks this Honorable Court to resolve the Circuit split, whether district courts enjoy full discretion without consulting U.S.S.G. 1B1.13 for 18 U.S.C. 3582(c)(1)(A) motion brought by a defendant in the, SECOND, FORTH, FIFTH, SIXTH, SEVENTH, NINTH, TENTH, DC, and the EIGHTH Circuit Court of Appeals.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 11, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 03, 2022, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT VIII OF THE CONSTITUTION (BAIL - PUNISHMENT)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Deliberate indifference to medical needs

Elementary principles of Eighth Amendment establish government's obligation to provide medical care for prisoners; deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by Eighth Amendment, no matter how evidenced.

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

§ 3582. Imposition of a sentence of imprisonment ...

(c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—

- (1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or . . .

§1B1.13. Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that-

(1) (A) extraordinary and compelling reasons warrant the reduction; ***

Commentary

Application Notes: ***

4. **Motion by the Director of the Bureau of Prisons.**—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

28 U.S.C. § 994

§ 994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System-- ***

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of-- ***

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18; ***

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

STATEMENT OF THE CASE

In 2014 Petitioner was indicted based on 18 U. S. C. 1341, took responsibility and plead guilty in 2015;

MOTION - 18 U.S.C. 3582(c)(1)(A)(i), May 4, 2020, [ECF 106];

ORDER - motion denied, Dec. 21, 2020, [ECF 119],

("Based on the most recent guidance from the CDC, the Court determines that Helmer's health issues, ... would, in theory constitute the extraordinary and compelling reasons required to grant relief under 3582(c)(1)(A).1 See U.S.S.G. 1B1.13, cmt. n. 1 (A)."), [ECF 119 at *2],

("And despite his extensive and commendable efforts at rehabilitation, the BOP currently rates Helmer as a MEDIUM risk for recidivism, which would make his release at this time inconsistent with the Sentencing Commission policy statements. See ECF No. 114 Exs. F3, M, N, O; U. S. S. G. 1B1.13 (2)."), [ECF 119 at *4];

PROBATION AND PRETRIAL SERVICES OFFICE, June 28, 2021, [ECF 129],

("Based upon the above, the release residence is APPROVED."), [ECF 129 at *2],

("He was treated for bronchitis in June and December 2020."), [ECF 129 at *2];

MOTION FOR RECONSIDERATION, Sept. 09, 2021, [ECF 138],

("BOP Health Services continue to ignore Defendant's sick call requests ..."), [ECF 138 at *4],

("You have all the symptoms of 'POST-COVID', ..."), [ECF 138 at *6],

("A court must consider the need to, ("provide the defendant with the needed ... medical care."), 18 U. S. C. 3553(a)(2)(D), ..."), [ECF 138 at *9];

ORDER - motion denied, Sept. 23, 2021, [ECF 139];

MOTION FOR RECONSIDERATION, Feb. 06, 2022, [ECF 148],

("PATTERN ... score lowers ... to "LOW" Risk of Recidivism, ..."), [ECF 148 at *3],

("To this day, Petitioner continues to suffer severe illness ..."), [ECF 148 at *3];

ORDER - motion denied, March 03, 2022, [ECF 149],

("Helmer now again moves for release, arguing that his long COVID symptoms remain and require his release. ... In short, he has not established that extraordinary and compelling reasons warrant his release or that the 18 U.S.C. 3553(a) factors support release."), [ECF 149 at *1].

REASONS FOR GRANTING THE PETITION

1.) The Court must assume as true all facts well pleaded in the complaint., Estate of Rosenberg v. Crandell 56 F.3d 35, 36 (8th Cir. 1995), Civil rights & pro se complaints must be liberally construed., Erickson v. Pardus, 551 U.S. 89, 94; 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007), ("[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment."), Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976), quoting, Gregg v. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976), ("This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.");

a.) Dec. 30, 2020, COVID-19 positive, ("To this day, Petitioner continues to suffer severe illness with, chest pains, shortness of breath, severe headaches, chronic fatigue, body aches, brain fog, loss of taste and smell, ..."), [ECF 148 at *3], Medical Services continues to ignore sick-call requests listing POST-COVID severe illness symptoms causing Petitioner to both, suffer, unable to provide self-care in prison, ("provide the defendant with needed ... medical care, ... in the most effective manner."), 18 U.S.C. 3553 (a) (2) (D);

b.) Previously, the district court ruled, ("Based on the most recent guidance from the CDC, the Court determines that Helmer's health issues, ... would, in theory constitute the extraordinary and compelling reasons required to grant relief under 3582(c)(1)(A).1 See U.S.S.G. 1B1.13, cmt. n. 1 (A)."), [ECF 119 at *2];

c.) In opposition of prior ruling, ("In short, he has not established that extraordinary and compelling reasons warrant his release or that the 18 U.S.C. 3553(a) factors support release."), [ECF 149 at *1];

d.) The district court denied relief without taking full consideration of Petitioner's POST-COVID health, the potentially adverse long term effects caused by untreated, ongoing severe illness supports application of 18 U.S.C. 3553 (a) (2) (D). Guidance from the CDC, states that some people experience a wide range of symptoms, including, ("chest pains, fatigue, and shortness of breath, ... that can last weeks or months after first being infected with the virus that causes COVID-19."), see, CDC, POST - COVID CONDITIONS, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html>;

Here, as in the SIXTH Circuit: ("Because we conclude that a remand is warranted based ...

that Coffman has demonstrated extraordinary and compelling reasons under U.S.S.G. 1B1.13, cmt. n. 1(A), we need not decide whether the First Step Act expanded the authority of district courts to consider under subdivision (D) reasons that are neither listed in the policy statement nor determined by the BOP as extraordinary and compelling."), U.S. v. Coffman, 2020 U.S. App. LEXIS 30009, No. 20-5602, at *3, (6th Cir. 2020),

e.) Petitioner argues 18 U. S. C. 3553 (a) (2) (D) factors justify a reduction in sentence as Petitioner is in need of, ("medical care, ... in an effective manner."), further incarceration is unnecessary as the nature of Petitioner's offense is very serious, but is nonviolent, the financial and collateral consequences of Petitioner's conviction doubtlessly reflects the severity of his offense. 18 U. S. C. 3553 (a) (2) (A). Likewise, such serious penalties send a clear message that those who commit such frauds will be unable to enjoy the fruits of their crimes and provides deterrence to both Petitioner and others from future criminal conduct, 18 U. S. C. 3553 (a) (2) (B), as for the need to, ("protect the public from further crimes of the defendant,"), 18 U. S. C. 3553 (a) (2) (C), the district court ordered the following special conditions during three years of supervised release: Pay Restitution; No alcohol, not to enter establishment where alcohol is sold; Participate in drug/alcohol treatment program; No contact with victim(s); Employment required; Financial disclosure; No new credit; No employment with fiduciary responsibilities; Prohibited from engaging in business pertaining to coins, collectibles, or precious metals; Restrict access to personal identifiers'; In other words, Petitioner will not easily find himself in a position to commit a similarly enormous fraud again.

f.) While no factor counsels seriously against a sentence reduction, at least one factor counsels in favor, 18 U.S.C. 3553 (a) (2) (D), a court must consider the need to, ("provide the defendant with needed ... medical care, ... in the most effective manner."), noting Petitioner's ability to provide self-care in prison is, ("substantially diminished within the environment of a correctional facility"), see, U.S.S.G. 1B1.13; Finally, the government's conclusory allegation that Petitioner may present a danger to the community owing to his crime, though unquestionably serious, was nonviolent and the Restrictions on the Petitioner's future employment during supervised release and the low likelihood that defendant, now age 61, with a \$1.3 million fraud on his record, will be able to obtain such high-level financial responsibility again, meaning that any risk of recidivism is vanishingly small. In short, the factors listed in section 18 U.S.C. 3553 (a) (2) (D), far from barring a reduction in sentence, may actually recommend one.

II.) The compassionate release (CR) statute, 18 U.S.C. § 3582(c)(1)(A), requires that any sentence reduction be "consistent with applicable policy statement by the Sentencing Commission." The policy statement is USSG §1B1.13, which listed three very specific reasons for granting CR, and a forth "catch all" provision permitting grant of a CR motion is, as determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the [other three] reasons.

1.) U.S.S.G. § 1B1.13 was written before the First Step Act authorized inmates to file their own sentence reduction motions. The Guideline has never been changed, because the Sentencing Commission has lacked a quorum, and thus has been able to conduct no business since 2018. But that has not stopped the government from arguing that CR motions could not be granted because the Director of the BOP has not decided that possessing COVID-19 risk factor(s) is an extraordinary and compelling reason for a sentence reduction. Many judges have decided that because §1B1.13 was written back in the day when only the BOP could file the motion, it was a relic that could be ignored. But not all. The result has been a terrible disparity between district courts in granting CR motions, the same set of facts that justify a sentence reduction in front of one judge would be rejected by another.

2.) Recently, numerous Circuits have reversed district court decisions holding that U.S.S.G. 1B1.13 does not apply to post-First Step Sentence reduction motions. "Application Note 4," the 2nd Circuit ruled in Brooker, ("[a] reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. 3582 (c)(1)(A). And we conclude that after the First Step Act, this language must be read not as a description of the former statute's requirements, but as defining the motions to which the policy statement applies. A sentence reduction brought about not 'upon motion by the Director of the Bureau of Prisons' is not a reduction 'under this policy statement.' In other words, if a compassionate release motion is not brought by the BOP Director, Guideline 1B1.13 does not, by its own terms, apply to it. Because Guideline 1B1.13 is not 'applicable' to compassionate release motions brought by defendants, Application Note 1(D) cannot constrain district courts' discretion to consider whether any reasons are extraordinary and compelling."), See, U.S. v. Brooker, Case No. 19-3218-CR, 2020 U.S. App. LEXIS 30605, (2nd Cir. Sept 25, 2020).

3.) The 6th Circuit issued a decision that is comprehensive, holding that, ("the passage of the First Step Act rendered 1B1.13 'inapplicable' to cases where an imprisoned person file a motion for compassionate release,"), the 6th made clear that Judges ruling on CR motions must, ("write more extensively in 3582 (c)(1)(A) decisions where the record bears little indication that the district judge considered all the defendant's evidence and arguments before granting or denying compassionate release."), U.S. v. Jones, 2020 US App. LEXIS 36620, No. 20-3701, (6th Cir. Nov. 20, 2020).

4.) In the 7th Circuit, ("Like the Second Circuit, see, U.S. v. Brooker, 976 F.3d 228

(2nd Cir. 2020), we disagree with this reading of the statute's trailing paragraph.

It says that a reduction must be 'consistent with' all 'applicable' policy statements.

Section 1B1.13 addresses motions and determinations of the Director, not motions by

prisoners. In other words, the Sentencing Commission has not yet issued a policy

statement 'applicable' to Gunn's request. And because the Guidelines Manual lacks an

applicable policy statement, the trailing paragraph of 3582(c)(1)(A) does not curtail a

district judges discretion. Any decision is 'consistent with' differs from 'authorized by' ."),

[further], ("The Department of Justice protests that this leaves district judges free to

invent their own policies about compassionate release. Like the Second Circuit, we do not

see the absence of an applicable policy statement as creating a sort of Wild West in court,

with every district judge having an idiosyncratic release policy. The statute itself sets the

standard: only 'extraordinary and compelling reasons' justify the release of a prisoner

who is outside the scope of 3582(c)(1)(A)(ii). The substantive aspect of the Sentencing

Commission's analysis in 1B1.13 and its Application Notes provide a working definition

of 'extraordinary and compelling reasons'; a judge who strikes off an a different path risks

an appellate holding that judicial discretion has been abused. In this way the Commission's

analysis can guide discretion without being conclusive. Cf. Gall v. United States,

552 U.S. 38, 49-50, 128 S. Ct. 586, 169, L. Ed. 2d 445 (2007); Kimbrough v. United States,

552 U.S. 85, 128 S. Ct. 558, 169 L. Ed. 2d 481 (2007)."), see, U.S. v. Gunn, 2020 U.S.

App. LEXIS 36612, No.20-1959, (7th Cir. Nov. 20,2020).

5.) Subsequently, the 4th Circuit agreed with Brooker, Gunn, and Jones that §1B1.13, because it refers only to compassionate release motions filed by the BOP, is not an ("applicable policy statement within the meaning of the statute, and thus may be ignored."), Beyond that, the 4th held that, ("the district courts in these cases appropriately exercised the discretion conferred by Congress... We see no error in their reliance on the length of the defendant's sentences, and the dramatic degree to which they exceed what Congress now deems appropriate, in finding 'extraordinary and compelling reasons' for potential sentence reductions."), see U.S. v. McCoy, Case No. 20-6821, 2020 U.S. App. LEXIS 37661, (4th Cir. Dec 2, 2020).

The key issue in McCoy, is whether the policy statement in §1B1.13 applies to prisoner motions for compassionate release. The court held that it did not. In doing so, the 4th Circuit joins the 2nd, 6th, and 7th Circuits on this issue. Title 28 U.S.C. § 994 authorizes the U.S. Sentencing Commission to define "extraordinary and compelling reasons," but as several courts have recently held, the Commission has not yet done so for prisoner submitted motions for compassionate release. This appellate holding is suggesting that rehabilitation gives sentencing judges the right to make sentence reductions.

The 4th Circuit handed "Kibble" a decision interesting for its concurring opinion, ("Section 3582(c)(1) necessarily envisions that the 3553(a) factors may balance differently upon a motion for compassionate release than they did at the initial sentencing,") Chief Justice Roger Gregory wrote, ("An individual requesting compassionate release will, in all

cases, be serving a sentence that a district court once held was 'sufficient but not greater than necessary'. If a district court's original 3553(a) analysis could always prove that a sentence reduction would intolerably undermine the 3553(a) factors, then 3582(c)(1) would, in effect, be a nullity. There is a good reason to believe that, in some cases, a sentence that was 'sufficient but not greater than necessary' before the coronavirus pandemic may no longer meet the criteria. A day in prison under the current conditions is a qualitatively different type of punishment than one day in prison used to be. In these times, drastically different these conditions, not contemplated by the original sentencing court, undoubtedly increase a prison sentence's punitive effect."), U.S. v. Kibble, 2021 US App. LEXIS 9530, No. 20-7009, (4th Cir. Apr. 1, 2021).

6.) The 10th Circuit joined in holding that, ("The First Step Act makes clear that Congress chose not to afford relief to all defendants who, prior to the First Step Act, were sentenced to mandatory life imprisonment under 841(b)(1)(A). But nothing in 401(c) or any other part of the First Step Act indicates that Congress intended to prohibit district courts, on an individualized, case-by-case basis, from granting sentence reductions under 3582(c)(1)(A)(i) to some of those defendants."),

U.S. v. McGee, 2021 US App. LEXIS 9074, No. 20-5047, (10th Cir. Mar. 29, 2021).

7.) The Fifth Circuit weighs in, ("1B1.13 says it only applies to 'motion[s] of the Director of the BOP'... When Congress enacted the First Step Act in December of 2018, it gave prisoners authority to file their own motions for compassionate release;... So the policy statement continues to govern on the 'motion of the Director of the Bureau of Prisons'. But it does not govern here on the newly authorized motion of a prisoner."),

U.S. v. Shkambi, 2021 US App. LEXIS 10053, No. 20-40543, (5th Cir. April 7, 2021).

8.) The 9th Circuit finding, ("The current version of USSG 1B1.13 is not an 'applicable policy statement' for 18 USC 3582(c)(1)(A) motion filed by a defendant,"), the 9th wrote, ("The Sentencing Commission's statements in USSG 1B1.13 may inform a district court's discretion for 3582(c)(1)(A) motions filed by a defendant, but they are not binding."), U.S. v. Aruda, 2021 US App. LEXIS 10119, No. 20-10245, (9th Cir. April 8,2021).

9.) DC Circuit joins 7 other Circuits holding, ("The policy statement's inapplicability is plain on its face. By its terms, the policy statement applies only to motions for compassionate release filed by the Bureau of Prisons, not by defendants") U.S. v. Long, U.S. App. LEXIS 14682, No. 20-3064, (DC Cir. May 18,2021).

III.) So far, the 2nd, 4th, 5th, 6th, 7th, 9th, 10th, and the DC Circuit Court of Appeals have ruled that §1B1.13 does not control compassionate release motions brought by a defendant. These Circuit rulings demonstrate that since the First Step Act became law, that district courts have broad discretion to consider any 'extraordinary and compelling reasons' for release that a defendant might raise to justify a sentence reduction under 3582(c)(1)(A), and that the guideline § 1B1.13 only applies to compassionate release motions brought by the Director of the BOP. After the changes made to the compassionate release statute by the FSA, district courts no longer require a motion from the Director of the BOP to resentence federal prisoners under 18 U.S.C. §3582(c)(1)(A)(i). A district court may resentence if a prisoner files a motion and establishes 'extraordinary and compelling reasons'. With the changes made to the compassionate release statute by the FSA, courts need not await a motion from the Director of the BOP to resentence prisoners to time served under 18 U.S.C. § 3582(c)(1)(A)(i) of 'extraordinary and compelling reasons', and the reasons that can justify resentencing need not involve only medical, elderly, or family circumstances. Congress initially delegated the responsibility

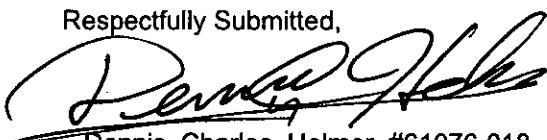
for determining what constitutes 'extraordinary and compelling reasons' to the U.S. Sentencing Commission, ("Commission"), see 28 U.S.C. § 994(t), ("The Commission... shall describe what should be considered extraordinary and compelling reasons for a sentence reduction, including the criteria to be applied and a list of specific examples."). Congress provided only one limitation to that delegate of authority: ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."), 28 U.S.C. § 994(t). Congress no doubt limited the ability of rehabilitation alone to constitute extraordinary circumstances so that sentencing courts could not use it as a full and direct substitute for the abolished parole system. Congress, however, contemplated that rehabilitation could be considered with other 'extraordinary and compelling reasons' sufficient to resentence people in individual cases. Indeed, the use of the modifier, "alone", signifies just the opposite; that rehabilitation could be used in tandem with other factors to justify a reduction; ("pursuant to 28 U.S.C. 994 (t), rehabilitation of the defendant is not by itself, an extraordinary and compelling reason for purposes of this policy statement."), see, U.S.S.G. 1B1.13, cmt. n. 3., Now, since contracting COVID-19, Medical Services has ignored numerous requests for POST-COVID medical care of severe illness is unnecessary and wanton infliction of pain and suffering proscribed by Eighth Amendment thereby causing Petitioner the inability to provide self-care in prison, ("A defendant's medical condition may warrant a sentence reduction if he or she is suffering from a physical ... condition that diminishes his ... ability to provide self-care in prison and from which he or she is not expected to recover."), see, U.S.S.G. 1B1.13 cmt. n. 1 (A), see also, ("to provide the defendant with needed ... medical care, ... in the most effective manner."), 18 U.S.C. 3553 (a) (2) (D).

CONCLUSION

Petitioner prays that this Honorable Court grant certiorari and remand.

Dated: April 22, 2022

Respectfully Submitted,



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Petitioner in pro se'